IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GLAZER ENHANCED FUND, L.P., GLAZER ENHANCED OFFSHORE FUND, LTD., GLAZER INDEX PLUS FUND, LTD., and HIGHMARK LIMITED, IN RESPECT OF ITS SEGREGATED ACCOUNT HIGHMARK MULTI-STRATEGY 2, Petitioners, v. INTEGRAL AD SCIENCE HOLDING CORP., a Delaware corporation, Respondent.	C.A. No. 2026-0228-JTL

OPINION GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS AS TO COUNT II

Date Submitted: October 13, 2026
Date Decided: November 17, 2026

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The petitioners demanded appraisal, then withdrew their demand for the bulk of their shares. After some initial confusion over the number of shares being withdrawn and the resulting amount due, the surviving corporation paid the petitioners the merger consideration. The petitioners received it on the eighth business day after they clarified the scope of their withdrawal.

The petitioners sued to recover interest from the date of the initial withdrawal notice through the date of payment. The surviving corporation moved for judgment on the pleadings on that claim.

This decision grants the surviving corporation's motion. Once the petitioners withdrew their shares, they became entitled to receive the merger consideration. The merger agreement did not provide for interest. It specifically said that the surviving corporation would not pay interest.

Precedent establishes that if a surviving corporation imposes demands on stockholders before paying them merger consideration that they are entitled to receive, or if a surviving corporation delays unreasonably before paying the merger consideration, then a stockholder may be able to recover interest. In that setting, principles of unjust enrichment may come into play. A stockholder may also have a claim for breach of contract, either under an express term or the implied covenant of good faith and fair dealing.

Nothing about this case approaches a level where equity would intervene. The surviving corporation made diligent efforts to pay the petitioners promptly. The surviving corporation could not pay the petitioners immediately because the size of

the payment was so large that the surviving corporation's sponsor had to make a capital call. The petitioners received their money within a reasonable time.

It is not reasonably conceivable that the plaintiffs could recover interest. Judgment on the pleadings is granted in the surviving corporation's favor on that claim.

I. FACTUAL BACKGROUND

The facts are drawn from the operative pleadings and the documents they incorporate by reference. When evaluating a motion for judgment on the pleadings, the court must view the facts in the light most favorable to the non-moving party. In this case, that means the light most favorable to the petitioners.

A. The Merger

The petitioners (collectively, the "Funds")[1] owned shares in Integral Ad Science Holding Corp. (the "Company"). Under an Agreement and Plan of Merger dated September 24, 2025 (the "Merger Agreement"), the Company agreed to merge with Igloo Group Acquisition Company, Inc., a wholly owned subsidiary of Igloo Group Parent, Inc. ("Parent"). The Company would survive as a wholly owned subsidiary of Parent. The Merger closed on December 23, 2025.

Under the Merger Agreement, each share of Company common stock was converted at the effective time into the right to receive $10.30 per share in cash (the

[1] The individual petitioners are Glazer Enhanced Fund, L.P., Glazer Enhanced Offshore Fund, Ltd., Glazer Index Plus Fund, Ltd., and Highmark Limited, in respect of its segregated account Highmark Multi-Strategy 2.

"Per Share Price"). The Merger Agreement specified that payment would be made "without interest thereon."[2]

The conversion at the effective time did not extend to shares whose holders timely demanded appraisal. The Merger Agreement defined those shares as "Dissenting Company Shares."[3] The Merger Agreement addressed what would happen if a holder sought appraisal and then withdrew the appraisal demand:

> If, after the Effective Time, any such holder fails to perfect or effectively withdraws or loses such rights with respect to any Dissenting Company Shares, such Dissenting Company Shares will thereupon be treated as if they had been converted into, at the Effective Time, the right to receive the Per Share Price and the Surviving Corporation shall remain liable for payment of the Per Share Price for such Dissenting Company Shares in accordance with this Agreement.[4]

In other words, the Merger Agreement called for the shares to be "treated as if they had been converted into, at the Effective Time, the right to receive the Per Share Price."

The information statement that the Company issued in connection with the Merger described this mechanism. It stated:

> If you fail to perfect, successfully withdraw your demand for appraisal, or lose the appraisal right, your shares of Company Common Stock will be converted into the right to receive the Per Share Price, in accordance with and pursuant to the Merger Agreement, without interest thereon.[5]

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[2] Merger Agreement (cited as "MA") § 2.7(a)(ii).

[3] *Id.*

[4] *Id.* § 2.7(c).

[5] Information Statement at 81.

Stockholders were thus told that if they demanded appraisal then withdrew their demand, they would receive the Per Share Price without interest.

B. The Appraisal Demand And Partial Withdrawal

The Funds properly demanded appraisal for 6,981,827 shares. By letter dated February 5, 2026, the Funds withdrew their appraisal demand as to 6,205,127 shares. The Funds asked for a total payment of $62,345,863.00, but that amount did not correspond to the number of shares they proposed to withdraw. If the Funds had intended to withdraw their appraisal demand for 6,205,127 shares, then they should have requested payment of $63,912,808.10, or approximately $1.56 million more. The amount they requested corresponded to the withdrawal of 6,052,996.4078 shares.

By email dated February 9, 2026, the Company contacted the Funds to raise the discrepancy, double-check the number of withdrawn shares, and confirm the amount due. That was a reasonable step to take.

By letter dated February 10, 2026, the Funds served a corrected demand. The Funds reiterated that they were withdrawing their demand for appraisal as to 6,205,127 shares but requested $63,912,808.10, the correct amount of merger consideration.

C. The Dispute Over Interest

By email dated February 11, 2026, one day after agreement on the number of shares and the amount, the Funds asked when the Company would wire payment. The Company's counsel explained that the corrected correspondence had been

provided to the Company but that counsel did not yet "have an update on timing."[6] Later that day, the Funds asked for confirmation that the wire transfers would arrive by February 13. The Funds reserved their right to seek interest.

By email dated February 13, the Funds again demanded payment. They also warned the Company that they had authorized commencement of "an action seeking the merger consideration, interest thereon, and fees for the delay."[7]

The Company explained that the Company's principal sponsor was "calling capital to provide the company with the necessary funds" and that the process would take time.[8] The Company stated that it was targeting payment on Friday, February 20, or, at the latest, Monday, February 23.[9]

D. This Lawsuit

On February 17, 2026, before the targeted February 20 payment date, the Funds filed this action. Count I seeks appraisal for 776,700 shares. Count II seeks a declaratory judgment that the Company violated Section 262 by failing to provide the merger consideration and "statutory interest" associated with the withdrawn shares from February 5 until the date of payment. The petition also seeks attorneys' fees and costs.

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[6] AB Ex. 1 at 6.

[7] *Id.* at 5.

[8] *Id.*

[9] *Id.* at 4.

On February 20, 2026, the Company wired the merger consideration for the withdrawn shares. The Company did not pay interest.

After receiving the payment, the Funds told the Company that they had expected to receive $71,912,818.10, an amount that would have been warranted if the Funds had withdrawn their appraisal demand as to all shares. The Company responded that the payment only reflected the aggregate Per Share Price for 6,205,127 shares. The Funds then confirmed that they had received the aggregate Per Share Price for the correct number of withdrawn shares.[10]

On May 5, 2026, the Company moved for partial judgment on the pleadings as to Count II.

II. LEGAL ANALYSIS

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings."[11] "A motion for judgment on the pleadings may be granted only when no material issue of fact exists and the movant is entitled to judgment as a matter of law."[12] The only live dispute in Count II concerns the Funds' entitlement to interest. That issue can be resolved on the pleadings as a matter of law.

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[10] Answer Ex. 4 at 1.

[11] Ct. Ch. R. 12(c).

[12] *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1205 (Del. 1993).

A. The Same-Action Issue

The Company argues initially that judgment should be entered in its favor because a petition for appraisal cannot include any plenary claims. Count II asserts a plenary claim for interest relating to the withdrawn shares. The Company argues that Count II should be dismissed because it cannot exist in the same action as an appraisal claim. That overly technical objection falls short.

The appraisal statute does not address whether a stockholder can combine an appraisal claim with plenary claims in a single pleading. In 1988, the Delaware Supreme Court relied on assorted policy rationales to conclude that a stockholder should file separate pleadings. But the high court also called for courts to consolidate the two actions for discovery and trial, negating any meaningful benefit from filing separate pleadings. Later decisions have exercised discretion in favor of a single pleading. In this case, a single pleading was appropriate.

1. *Technicolor*

In *Technicolor*, a stockholder pursued an appraisal action against the surviving corporation. After discovery generated evidence of potential wrongdoing, the stockholder filed a separate plenary action asserting fraud and breaches of fiduciary duty against the surviving corporation, most of its directors, and other transaction participants. The stockholder both moved to consolidate the two actions for discovery and trial and sought to amend its appraisal petition to incorporate the plenary claims. The defendants opposed the motions, arguing that by seeking appraisal, the stockholder had waived its right to assert plenary claims.

Chancellor Allen denied the motions. He focused principally on whether the plenary claims should be dismissed because the stockholder had waived its right to assert them by seeking appraisal. Chancellor Allen rejected the waiver argument, but held that the stockholder had to elect whether to pursue appraisal or the plenary claims "no later than the time plaintiff announces itself ready for trial."[13] He reasoned that by requiring an election at that point in the case, the stockholder would receive "the fullest opportunity to discover facts relating to his election" and that "discovery before any election will enable the development of a record on all potential issues."[14]

Chancellor Allen did not expressly analyze the motion to consolidate or the motion to amend, but he denied both.[15] For Chancellor Allen to conclude that the cases could not be consolidated for trial fit with his view that the stockholder had to make an election between an appraisal proceeding and plenary claims once the stockholder was ready for trial. Although it seems possible that the cases could have been consolidated for purposes of discovery, Chancellor Allen denied the motion to consolidate in its entirety.[16] He also denied the motion to amend, and that was similarly logical in light of his view about the need for a pre-trial election. Granting

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[13] *Cede & Co. v. Technicolor, Inc.*, 1987 WL 4768, at *8 (Del. Ch. Jan. 13, 1987), *aff'd in part, rev'd in part*, 542 A.2d 1182 (Del. 1988).

[14] *Id.*

[15] *Id.* at *9 ("All pending motions will be denied.").

[16] *Id.*

the motion to amend would have resulted in a single proceeding involving all claims that theoretically could have proceeded through trial.

Because of the significance of his ruling, he certified an interlocutory appeal.[17] The Delaware Supreme Court accepted it.[18]

The Delaware Supreme Court affirmed the denial of the defendants' motion to dismiss and the stockholder's motion to amend, but reversed the denial of the motion to consolidate and disagreed with Chancellor Allen's ruling on the election of remedies.[19] The appeal principally focused on whether the stockholder could "proceed to trial on both its appraisal remedy and its equitable claim against the several defendants, individual and corporate, for breach of fiduciary duty occurring in the merger."[20] The justices understood Chancellor Allen to have held that the stockholder could "pursue independently both its appraisal and its [plenary] actions," but then

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[17] *Id.*

[18] *Cinerama, Inc. v. Technicolor, Inc.*, 523 A.2d 981, 1987 WL 36983 (Del. Mar. 26, 1987) (ORDER).

[19] *Cede & Co. v. Technicolor, Inc.*, 542 A.2d 1182, 1192 (Del. 1988). The parties made five subsequent trips to the Delaware Supreme Court: four in the appraisal proceeding and one in the plenary action. *See Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26 (Del. 2005); *Cede & Co. v. Technicolor, Inc.*, 758 A.2d 485 (Del. 2000); *Cede & Co. v. Technicolor, Inc.*, 684 A.2d 289 (Del. 1996); *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156 (Del. 1995); *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345 (Del. 1993), *decision modified on reargument*, 636 A.2d 956 (Del. 1994). I generally label the decisions based on whether they were issued in the appraisal action or the plenary action. Hence *Technicolor Plenary I* or *Technicolor Appraisal II*. The first appeal involved both actions. Hence just *Technicolor*.

[20] *Technicolor*, 542 A.2d at 1184.

"would be required to elect which of its two suits to bring to trial and which suit to abandon."[21]

The justices started by framing overarching principles. They described appraisal as a limited statutory remedy directed to "the payment of fair value of the shares . . . by the surviving or resulting corporation" and observed that "[a] determination of fair value does not involve an inquiry into claims of wrongdoing in the merger."[22] They contrasted appraisal with a plenary action asserting fraud and unfair dealing, which turned on "whether wrongdoing can be established" and sought damages from "the alleged wrongdoers because it is they who arguably caused the injury and should pay any damage award."[23] The justices explained that "an appraisal action may not provide a complete remedy for unfair dealing or fraud because a damage award in a fraud action may include 'rescissory damages if the [trier of fact] considers them susceptible of proof and a remedy appropriate to all issues of fairness before him.'"[24]

Based on those distinctions, the Delaware Supreme Court held that Chancellor Allen "was clearly correct in refusing to dismiss" the plenary action.[25] The Delaware

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[21] *Id.*

[22] *Id.* at 1189.

[23] *Id.*

[24] *Id.* at 1187–88 (quoting *Weinberger v. UOP, Inc.*, 457 A.2d 701, 714 (Del. 1983)).

[25] *Id.* at 1188.

Supreme Court also held that the Chancellor "correctly denied [the stockholder's] motion to amend and enlarge its appraisal action to include" plenary claims.[26] The justices explained that "[a] determination of fair value does not involve an inquiry into claims of wrongdoing in the merger,"[27] in contrast to a plenary action where "the focus of the suit is whether wrongdoing can be established."[28] A plenary action therefore required additional parties as defendants, namely "the alleged wrongdoers . . . who arguably caused the injury and should pay any damage award."[29] Without addressing the possibility that the alleged wrongdoers could be added defendants on the plenary claims, the Delaware Supreme Court held that "[t]o permit [a stockholder] to amend its statutory appraisal action to include its [plenary] claims would impermissibly broaden the legislative remedy [and] fail to bring before the Court the necessary parties for the fashioning of any appropriate relief for a fraud."[30]

The justices further asserted that adding plenary claims to an appraisal proceeding would "likely create unforeseeable administrative and procedural problems for litigants and the courts."[31] The justices posited that only a small

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[26] *Id.* at 1189.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

proportion of a corporation's stockholders typically pursue appraisal, so in a single proceeding involving both appraisal and plenary claims, "shareholders not seeking appraisal would be required to litigate 'entire fairness' claims identical to the claims litigated by shareholders with perfected appraisal rights but through separate actions."[32] The justices believed that this outcome would "create a substantial risk of inconsistent judgments and raise issues of collateral estoppel."[33] The Delaware Supreme Court concluded that "the Court of Chancery did not abuse its discretion in denying [the] motion to amend."[34]

The last issue was the motion to consolidate, including the election of remedies. On those issues, the Delaware Supreme Court reversed the Court of Chancery. The justices rejected Chancellor Allen's conclusion that a petitioner must elect a cause of action at the beginning of trial, reasoning that "[n]o rule of law required the Court to put [a stockholder] to an election of remedies before judgment."[35] Reiterating that an appraisal proceeding and a plenary action presented different and "not inconsistent" claims for relief, the court held that the stockholder "should not have been barred from proceeding to trial on its alternate claims."[36]

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[32] *Id.* at 1189–90.

[33] *Id.* at 1190.

[34] *Id.*

[35] *Id.*

[36] *Id.* at 1190–91.

The Delaware Supreme Court nevertheless held that the motion to consolidate the two actions "for purposes of trial as well as discovery . . . should have been granted."[37] The high court noted that the parties had "demonstrated the feasibility and desirability of consolidation" by agreeing that discovery in the appraisal case could be used in the plenary action.[38] The high court also noted that "much of the evidence . . . that will be presented . . . concerning valuation under appraisal will be the same evidence presented during the [plenary] action" and that "consolidation of the two actions should result in convenience and economy in the administration of both actions."[39] The Delaware Supreme Court criticized Chancellor Allen for having "failed to account for the economy and procedural fairness that will result from the consolidation of the two actions" and stated that, on remand, the stockholder plaintiff "will be permitted to consolidate its appraisal and its [plenary] actions for discovery as well as trial."[40]

Technicolor thus reached seemingly inconsistent results. The justices refused to permit the stockholder plaintiff to amend its appraisal petition to assert plenary claims, but required functionally the same result by directing the Court of Chancery to consolidate the appraisal proceeding and the plenary proceeding for purposes of

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[37] *Id.* at 1190.

[38] *Id.* at 1192.

[39] *Id.*

[40] *Id.*

discovery and trial. That same endpoint could have been reached simply by permitting the stockholder to amend its appraisal petition to add the breach of fiduciary duty claims and name the additional defendants on those claims.

As a practical matter, the Delaware Supreme Court's preference for consolidation had a limited, case-specific benefit. The *Technicolor* plaintiff had already filed two separate actions, so consolidation resulted in a single proceeding. Permitting amendment in the appraisal action would have left a duplicative plenary action outstanding. In *Technicolor*, therefore, the Delaware Supreme Court's approach had the marginal benefit of cleaning up the docket (something the parties could have achieved on their own via stipulated dismissal). But it came at the cost of seemingly requiring future stockholders to file two separate actions and seek consolidation.

2. *Nagy*

Twelve years later, the issue of asserting plenary claims and an appraisal claim in the same pleading arose again in *Nagy v. Bistricer*.[41] The sole minority stockholder in a private company filed a single complaint. Two counts asserted claims for breach of fiduciary duty; a third alleged aiding and abetting; and a fourth sought

[41] 770 A.2d 43 (Del. Ch. 2000).

appraisal.[42] The defendants interpreted *Technicolor* as foreclosing a single civil action that would encompass both the appraisal proceeding and the plenary claims.[43]

Chief Justice Strine, then serving as a Vice Chancellor, rejected that reading of *Technicolor*.[44] Despite acknowledging that *Technicolor*'s language "arguably supports" an "inflexible rule that a complaint may never raise both an appraisal and a breach of fiduciary claim," he declined to "read the opinion the same way."[45] In *Nagy*, there was only a single minority stockholder, so "there [was] no distinction in identity between those plaintiffs seeking appraisal and those raising equitable claims."[46] And because the stockholder in *Nagy* had been "precise in his approach" by asserting appraisal only against the surviving corporation and the fiduciary claims against the allegedly faithless fiduciaries, "there [was] no chance that the case will proceed without necessary parties before the court or that the case will subject defendants to improper forms of liability."[47]

Chief Justice Strine also disagreed with the objection that combining plenary claims with an appraisal proceeding would improperly enlarge the appraisal

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[42] *Id.* at 48–49.

[43] *Id.* at 49, 58.

[44] *Id.* at 58.

[45] *Id.*

[46] *Id.*

[47] *Id.* at 57–58.

proceeding. He noted that he would apply "the different rules of law that uniquely apply to each" and that he had "no intention to grant [appraisal relief] more substantial than the statute authorizes."[48] He did not think that having the claims appear in a single pleading would "impermissibly broaden the legislative remedy" of appraisal.[49] He also saw no reason why a single pleading created any greater risks than two separate actions followed by consolidation for purposes of discovery and trial.[50] Because separate complaints "would inevitably be followed by requests to consolidate the separate cases before a single judge and for consolidated pre-trial and trial proceeding," as happened in *Technicolor*, he concluded that requiring separate pleadings would "disserve judicial and litigative efficiency" without any "fathomable justification."[51]

3. The Lessons Of Experience

In the twenty-six years since *Nagy*, the Court of Chancery has regularly presided over consolidated appraisal proceedings and breach-of-fiduciary-duty actions. [52] That additional experience has borne out Chief Justice Strine's assessments in *Nagy* and negated the concerns expressed in *Technicolor*.

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[48] *Id.* at 58.

[49] *Id.*

[50] *Id.* at 58 n.31.

[51] *Id.* at 58.

[52] *E.g.*, *In re Mindbody, Inc., S'holder Litig.*, 2023 WL 7704774 (Del. Ch. Nov. 15, 2023), *aff'd in part, rev'd in part*, 332 A.3d 349 (Del. 2024); *In re Happy Child World, Inc.*, 2020 WL 5793156 (Del. Ch. Sept. 29, 2020); *In re Xura, Inc., S'holder*

A consolidated proceeding that follows the filing of two separate actions is not meaningfully different from a single pleading that contains an appraisal count and plenary counts. A single pleading can name the surviving corporation as a defendant for the appraisal claim and other defendants for the plenary claims. It therefore need not, as *Technicolor* feared, "fail to bring before the Court the necessary parties."[53] A single pleading also does not create any greater "administrative and procedural problems," nor any greater risks of inconsistent judgments or collateral estoppel, than two separate pleadings followed by consolidation.[54] A single pleading that contains an appraisal count and plenary counts also does not risk "impermissibly broaden[ing] the legislative remedy," because, as Chief Justice Strine explained in *Nagy*, the court can keep the claims straight to the same degree that it can do so in a consolidated proceeding.[55]

Moreover, several of the objections that the *Technicolor* decision raised when affirming the denial of the motion to amend are no longer valid. It is no longer true

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Litig., 2018 WL 6498677 (Del. Ch. Dec. 10, 2018); *ACP Master, Ltd. v. Sprint Corp.*, 2017 WL 3421142 (Del. Ch. July 21, 2017), *aff'd,* 184 A.3d 1291 (Del. 2018); *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015); *In re Sunbelt Beverage Corp. S'holder Litig.*, 2010 WL 26539 (Del. Ch. Jan. 5, 2010); *In re Trados Inc. S'holder Litig.*, 2009 WL 608552 (Del. Ch. Feb. 26, 2009); *In re PNB Hldg. S'holders Litig.*, 2006 WL 2403999 (Del. Ch. Aug. 18, 2006); *Del. Open MRI Radiology Assocs., P.A. v. Kessler*, 898 A.2d 290 (Del. Ch. 2006); *In re Emerging Commc'ns, Inc. S'holders Litig.*, 2004 WL 1305745 (Del. Ch. May 3, 2004).

[53] *Compare Technicolor*, 542 A.2d at 1189, *with Nagy*, 770 A.2d at 58.

[54] *Compare Technicolor*, 542 A.2d at 1189–90, *with Nagy*, 770 A.2d at 58.

[55] *Compare Technicolor*, 542 A.2d at 1189, *with Nagy*, 770 A.2d at 58.

that "[a] determination of fair value does not involve an inquiry into claims of wrongdoing in the merger."[56] Particularly since *Dell*,[57] many appraisal proceedings resemble fiduciary duty actions in their focus on the sale process.[58] In addition, since *Technicolor*, both the Delaware Supreme Court and this court have recognized that evidence relating to breaches of fiduciary duty is discoverable and relevant in an appraisal proceeding, because it affects the credibility of witnesses and the reliability of the data they created to inform the valuation process.[59] Keeping the pleadings

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[56] *Technicolor*, 542 A.2d at 1189.

[57] *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd.*, 177 A.3d 1 (Del. 2017).

[58] *E.g.*, *BCIM Strategic Value Master Fund, LP v. HFF, Inc.*, 2022 WL 304840 (Del. Ch. Feb. 2, 2022); *In re Appraisal of Regal Entm't Gp.*, 2021 WL 1916364 (Del. Ch. May 13, 2021); *In re Panera Bread Co.*, 2020 WL 506684 (Del. Ch. Jan. 31, 2020); *In re Stillwater Mining Co.*, 2019 WL 3943851 (Del. Ch. Aug. 21, 2019), *aff'd sub nom. Brigade Leveraged Capital Structures Fund Ltd. v. Stillwater Mining Co.*, 240 A.3d 3 (Del. 2020); *In re Appraisal of Columbia Pipeline Gp., Inc.*, 2019 WL 3778370 (Del. Ch. Aug. 12, 2019); *In re Appraisal of Solera Hldgs., Inc.*, 2018 WL 3625644 (Del. Ch. July 30, 2018); *Blueblade Capital Opportunities LLC v. Norcraft Cos., Inc.*, 2018 WL 3602940 (Del. Ch. July 27, 2018).

[59] *See, e.g.*, *Ala. By-Prods. Corp. v. Neal*, 588 A.2d 255, 257 (Del. 1991) (noting that acts of unfair dealing and breaches of fiduciary duty "should, and will, be considered in assessing the credibility of the respondent corporations' valuation contentions" (internal quotation marks omitted)); *In re Chang's Hldgs. v. Universal Chems. & Coatings, Inc.*, 1992 WL 301327, at *1 (Del. Ch. Oct. 13, 1992) ("[I]nformation concerning directors' breach of fiduciary duty may be relevant to an appraisal valuation [because] expert valuations are based on assumptions, and many of those assumptions are derived from information provided by a company's board."); *Pinson v. Campbell-Taggart, Inc.*, 1989 WL 17438, at *7 (Del. Ch. Feb. 28, 1989) ("[I]t should not be concluded that in an appraisal the Court will blind itself to or ignore, the manner and procedures by which the merger price was arrived at. If corporate fiduciaries engage in self-dealing and fix the merger price by procedures not calculated to yield a fair price, those facts should, and will, be considered in assessing

separate is also insignificant, because when an appraisal proceeding and the plenary claims are consolidated and tried together, the court hears the same evidence on both claims. *Technicolor* anticipated these outcomes by ordering consolidation, yet strangely ignored them when denying the motion to amend.

Nearly forty years of post-*Technicolor* experience teaches that there is no practical difference between a single pleading that asserts both an appraisal action and plenary claims and two separate pleadings, one asserting an appraisal claim and the other asserting plenary claims, that a court promptly consolidates for purposes of discovery and trial. Requiring separate pleadings simply creates an additional filing burden, the need for the plaintiff to pay additional filing fees, and additional work for the court to consolidate the separate cases.

The rationale for *Technicolor*'s denial of the motion to amend thus no longer makes sense. Fortunately, *Technicolor* did not mandate separate filings. The Delaware Supreme Court reviewed the motion to amend under an abuse of discretion standard, indicating that the Court of Chancery has discretion to permit a party to amend an appraisal petition to add plenary claims.[60] It follows that a court also has discretion to permit a party to include both an appraisal claim and plenary claims in a single pleading.

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the credibility of the Respondent corporation's valuation contentions. Equity and logic require no less." (footnote omitted)).

[60] *See Technicolor*, 542 A.2d at 1189–90 (reviewing the denial of leave to amend for abuse of discretion); *Harris v. Harris FRC Corp.*, 2021 WL 57021, at *3 (Del. Ch. Jan. 7, 2021) (granting leave to amend an appraisal petition to assert plenary claims).

4. Application To This Case

Relying on *Technicolor*, the Company seeks judgment on the pleadings on the theory that the Funds cannot assert a plenary claim for interest in the same pleading in which they sought appraisal. That position has nothing to recommend it.

Nagy explains the fallacy of requiring a separate appraisal petition and a separate complaint asserting plenary claims, only to consolidate the two after filing. The Company tries to distinguish *Nagy* as involving a claim for breach of fiduciary duty, rather than a claim for interest, but there is no meaningful distinction. If anything, an interest claim is better suited for combining with an appraisal action because interest calculations have long been part of appraisal proceedings. Before the 2007 amendment that established a statutory rate of interest,[61] this court regularly conducted proceedings to set an appropriate interest rate, decide whether interest should be simple or compound, and determine the frequency of compounding.[62] Although the 2007 amendment established a presumptive statutory interest rate, appraisal proceedings still involve interest calculations.[63]

It also makes sense that an appraisal petition could incorporate a plenary claim for interest on withdrawn shares. After a petitioner has sought appraisal, the

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[61] 76 Del. Laws ch. 145, § 14 (2007).

[62] *See, e.g.*, *Taylor v. Am. Specialty Retailing Gp., Inc.*, 2003 WL 21753752, at *11–13 (Del. Ch. July 25, 2003).

[63] *See In re Appraisal of Metromedia Int'l Gp., Inc.*, 971 A.2d 893, 907 (Del. Ch. 2009).

claimant can withdraw the appraisal claim in whole or in part with the surviving corporation's consent.[64] If a dispute arose over interest on withdrawn shares, the court hearing the appraisal proceeding could and should address it. Requiring a separate action would be wasteful.

The Funds' claim for interest is thus even less likely to present any concerns about enlarging the appraisal remedy than the breach of fiduciary duty claims in *Nagy*.[65] The claim can proceed.

B. The Interest Issue

Although the Company's procedural argument fails, the Company prevails on the merits. The Funds assert three bases for interest: a statutory award, an award based on unjust enrichment, and an award based on breach of contract. None succeed.

1. The Unpled-Claims Argument

Once again, the Company begins with a strained procedural argument. The Company seeks judgment on the pleadings on the theory that the Funds did not expressly plead a claim for unjust enrichment or breach of contract. That argument misunderstands pleading doctrine.

Delaware adheres to a notice-pleading regime. That approach rejects "the antiquated doctrine of the 'theory of the pleadings'—*i.e.*, the requirement that a

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[64] 8 *Del. C.* § 262(k).

[65] 770 A.2d at 58.

plaintiff must plead a particular legal theory."[66] Through a combination of rules, the Federal Rules of Civil Procedure "effectively abolished the restrictive theory of the pleadings doctrine, making it clear that it is unnecessary to set out a legal theory for the plaintiff's claim for relief."[67] Under the Federal Rules, "particular legal theories of counsel yield to the court's duty to grant the relief to which the prevailing party is entitled, whether demanded or not."[68]

> [T]he federal rules—and the decisions construing them—evince a belief that when a party has a valid claim, he should recover on it regardless of his counsel's failure to perceive the true basis of the claim at the pleading stage, provided always that a late shift in the thrust of the case will not prejudice the other party in maintaining a defense upon the merits.[69]

The Delaware courts adopted procedural rules modeled on the Federal Rules and embraced their approach to pleading. Thus, the question is whether the pleading's allegations support a reasonably conceivable claim for relief.

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[66] *HOMF II Inv. Corp. v. Altenberg*, 2020 WL 2529806, at *26 (Del. Ch. May 19, 2020), *aff'd*, 263 A.3d 1013 (Del. 2021) (TABLE).

[67] 5 Charles Alan Wright, Arthur R. Miller & A. Benjamin Spencer, *Federal Practice and Procedure* § 1219 (4th ed.), Westlaw (database updated Apr. 2026) [hereinafter Wright & Miller] (footnote omitted).

[68] *Gins v. Mauser Plumbing Supply Co.*, 148 F.2d 974, 976 (2d Cir. 1945) (Clark, J.).

[69] 5 Wright & Miller, *supra* note 67, § 1219 (footnote omitted). *See generally Johnson v. City of Shelby,* 574 U.S. 10, 11–12 (2014) (per curiam) (reversing dismissal of complaint for failure to articulate a claim under 42 U.S.C. § 1983; explaining that the Federal Rules of Civil Procedure reject the "theory of the pleadings" and "do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted").

The Funds' failure to expressly identify the legal theories on which they seek interest is therefore not fatal. The complaint put the Company on notice that the Funds were seeking interest. That is all that is required.

2. Statutory Interest

The first possible basis for interest is the appraisal statute itself. That theory fails because the plain language of the appraisal statute does not provide for interest. It contemplates that withdrawn shares receive the merger consideration in accordance with the terms of the merger agreement.

Whether the appraisal statute provides for interest on withdrawn shares raises a question of statutory construction. "The goal of statutory construction is to determine and give effect to legislative intent."[70] A court may not "engraft upon a statute language which has been clearly excluded therefrom by the Legislature" or "assume that the omission was the result of an oversight on the part of the General Assembly."[71] When a statute is silent on a particular matter, "the otherwise detailed nature of the statute in other respects can be significant."[72]

Those principles apply to the availability of interest under the appraisal statute. Before the appraisal statute was amended to provide for interest, the

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[70] *One-Pie Invs., LLC v. Jackson*, 43 A.3d 911, 914 (Del. 2012) (quoting *LeVan v. Indep. Mall, Inc.*, 940 A.2d 929, 932 (Del. 2007)).

[71] *Panera*, 2020 WL 506684, at *44 (quoting *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982)).

[72] *Id.* (quoting *Terex Corp. v. S. Track & Pump, Inc.*, 117 A.3d 537, 544 (Del. 2015)).

Delaware Supreme Court held that because "[t]he statute makes no mention of interest," the judiciary could not award it.[73]

The following year, the appraisal statute was amended to provide for interest as part of a fair value award.[74] Section 262(h) states that the court "shall determine the fair value of the shares . . . together with interest, if any, to be paid upon the amount determined to be the fair value."[75] The statute also provides that, unless the court determines otherwise for good cause, "interest from the effective date of the merger . . . through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate."[76]

Since 2016, the appraisal statute authorizes a surviving corporation to prepay a portion of the anticipated appraisal award.[77] The statute provides that after a prepayment, "interest shall accrue thereafter . . . only upon" the difference between the prepaid amount and the court's eventual fair value determination, plus any previously accrued but unpaid interest.[78]

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[73] *Meade v. Pac. Gamble Robinson Co.*, 58 A.2d 415, 417–18 (Del. 1948).

[74] 47 Del. Laws ch. 136, § 7 (1949).

[75] 8 *Del. C.* § 262(h).

[76] *Id.*

[77] 80 Del. Laws ch. 265, § 11 (2016).

[78] 8 *Del. C.* § 262(h).

The appraisal statute does not provide for interest on withdrawn shares. The statute addresses withdrawal in two places. In Section 262(e), the statute states: "[A]t any time within 60 days after the effective date of the merger, . . . any person entitled to appraisal rights who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such person's demand for appraisal and to accept the terms offered upon the merger . . . ."[79] In Section 262(k), the statute states:

> If a person who has made a demand for an appraisal in accordance with this section shall deliver to the surviving, resulting or converted entity a written withdrawal of such person's demand for an appraisal in respect of some or all of such person's shares in accordance with subsection (e) of this section, either within 60 days after such effective date or thereafter with the written approval of the corporation, then the right of such person to an appraisal of the shares subject to the withdrawal shall cease.[80]

Those sections contemplate that an appraisal claimant who withdraws an appraisal claim becomes entitled to the merger consideration. Neither subsection contemplates interest on the merger consideration. Neither section mentions interest nor provides for an accrual date, rate, or method of compounding.

The statute therefore does not provide for interest on withdrawn shares. Instead, upon withdrawing shares, the Funds became entitled to the "terms offered upon the merger." The Merger Agreement provided for the conversion of each share into the right to receive the Per Share Price, defined as "cash in an amount equal to

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[79] *Id.* § 262(e).

[80] *Id.* § 262(k).

$10.30, without interest thereon."[81] The Merger Agreement specifically addresses withdrawn shares, stating that if a holder who sought appraisal "effectively withdraws" the demand, then withdrawn shares "will thereupon be treated as if they had been converted into, at the Effective Time, the right to receive the Per Share Price."[82]

The fact that the Merger Agreement did not provide for interest should not have been a surprise to the Funds. The information statement informed stockholders that, if they "successfully withdraw [their] demand for appraisal," then their shares would be "converted into the right to receive the Per Share Price, in accordance with and pursuant to the Merger Agreement, without interest thereon."[83] The Funds filed their appraisal demand with their eyes open.

The Funds observe that Section 262(k) states that upon withdrawal, the right to an appraisal "shall cease." The Funds argue that this means that the right to an appraisal ceases immediately, meaning that the right to the merger consideration accrues immediately, and the merger consideration becomes due and payable immediately.[84] They reason that delayed payment should therefore be made with interest. To support this argument, they analogize to Section 203(b)(5), which

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[81] MA § 2.7(a)(ii).

[82] *Id.* § 2.7(c).

[83] Information Statement at 81.

[84] *See* AB at 9–10, 19.

exempts certain business combinations with interested stockholders. The exemption applies when a stockholder "becomes an interested stockholder inadvertently" and "as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an interested stockholder."[85] The Funds argue that a stockholder who ceases to be an interested stockholder under Section 203 may immediately pursue a takeover. By analogy, an appraisal claimant whose appraisal rights cease upon withdrawal may immediately claim the merger consideration.

The Funds are correct that the right to appraisal ceases immediately upon an effective withdrawal, but it does not follow that payment is due immediately or that any delay requires the payment of interest. The appraisal statute provides that the party withdrawing the appraisal demand becomes entitled to the consideration provided in the merger. Here, the merger agreement did not provide for interest.

It also does not follow from the verbal phrase "shall cease" that the Funds have a right to immediate payment. The appraisal statute was first enacted in 1899.[86] The section on withdrawal was added in 1943.[87] The section authorizing interest was added in 1949.[88] It was not physically possible to provide immediate payment during

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[85] 8 *Del. C.* § 203(b)(5).

[86] 21 Del. Laws ch. 273, § 56 (1899).

[87] 44 Del. Laws ch. 125, § 6 (1943).

[88] 47 Del. Laws ch. 136, § 7 (1949).

those eras. What the appraisal statute necessarily contemplated is reasonably prompt payment.

The appraisal statute does not provide for interest on withdrawn shares. The Company is entitled to judgment as a matter of law on this issue.

3. The Unjust Enrichment Theory

The fact that the appraisal statute and the Merger Agreement do not expressly contemplate interest does not mean that a court cannot award interest in an appropriate case as a matter of equity. But it is not reasonably conceivable that this case could warrant an equitable award.

One possible theory is unjust enrichment. That concept refers to "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."[89] The Delaware Supreme Court traditionally framed its elements as "(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification, and (5) the absence of a remedy provided by law."[90] *Garfield* clarified two aspects of the traditional framing. First, a claim for unjust enrichment does not strictly require an impoverishment, so long as the defendant "received a benefit, that the defendant's receipt of the benefit was

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[89] *Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988) (quoting 66 Am. Jur. 2d *Restitution and Implied Contracts* § 3, at 945 (1973)).

[90] *Garfield v. Allen*, 277 A.3d 296, 341 (Del. Ch. 2022) (quoting *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010)).

unjustified, and that there is some connection between the benefit unjustly received and an invasion of the plaintiff's legally protected rights."[91] Second, a plaintiff only needs to plead the absence of a remedy at law when necessary to establish equitable jurisdiction.[92] In *Monsanto*, the Delaware Supreme Court adopted that framing.[93] *Monsanto* thus abrogated *Nemec*'s statement of the elements for unjust enrichment.

Mehta illustrates when an unjust enrichment theory could lead to an equitable award of interest. There, stockholders timely demanded appraisal.[94] But no stockholder filed an appraisal petition within the statutory 120-day period.[95] As a result, their appraisal rights lapsed on September 24, 2011, and they became entitled to the merger consideration.[96] The surviving corporation, however, still had not paid it as of October 20, 2014, when the court issued its decision.[97] Instead, the surviving corporation took the position, contrary to the statute, that the stockholders had to formally withdraw their appraisal demand, that they could not withdraw their

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[91] *Id.* at 345.

[92] *Id.* at 351.

[93] *State v. Monsanto Co.*, 299 A.3d 372, 391 & n.115 (Del. 2023).

[94] *Mehta v. Smurfit-Stone Container Corp.*, 2014 WL 5438534, at *2 (Del. Ch. Oct. 20, 2014).

[95] *Id.* at *5.

[96] *Id.*

[97] *Id.* at *4.

demand without the company's consent, and that the company would only agree to a withdrawal as part of a broader settlement.[98]

On those facts, the court held that the stockholders were entitled to the merger consideration and could recover pre- and post-judgment interest from the date when the merger consideration should have been paid.[99] The court reasoned that principles of unjust enrichment supported the equitable award of interest.[100]

An award of interest generally serves two purposes: compensating a party that should have received money for the loss of its use, and forcing the party that retained the funds to disgorge any benefit from retaining it.[101] *Mehta* involved both: The failure to pay the merger consideration gave rise to an unjust enrichment by enriching the surviving corporation while impoverishing the stockholders.[102]

Chertok is another example where interest was warranted.[103] On July 29, 2017, the stockholder withdrew his appraisal demand.[104] The company, however, refused to pay the merger consideration unless the stockholder provided a broad release of

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[98] *Id.* at *2.

[99] *Id.* at *6.

[100] *Id.* at *5–6. *Mehta* observed that alternatively, a breach of contract theory might have supported the award of interest. *Id.*

[101] *Taylor*, 2003 WL 21753752, at *12.

[102] *Mehta*, 2014 WL 5438534, at *5.

[103] *Chertok v. OnSolve LLC*, 2021 WL 1714938 (Del. Ch. Apr. 29, 2021).

[104] *Id.* at *3.

claims.[105] On May 29, 2020, the stockholder sued to recover the merger consideration plus interest, and the corporation later moved to dismiss the claim.[106] The court found it reasonably conceivable that the corporation lacked any justification for insisting on the release and that the stockholder had stated a claim for unjust enrichment.[107] After trial, the court held that the company had "unlawfully conditioned" payment on the release and entered judgment for the stockholder.[108] Having prevailed, the stockholder was entitled to prejudgment interest "as a matter of right."[109]

Nothing similar happened here. The Funds withdrew their appraisal demand for 6,205,127 shares on February 5, 2026, but their initial withdrawal notice contained a discrepancy that created confusion about the number of shares being withdrawn and the amount due. After the Company sought to clarify matters, the Funds served a corrected demand on February 10. The Company paid the merger consideration on February 20, ten days later.

That is a facially reasonable time for payment. The withdrawal of 6,205,127 shares entitled the Funds to approximately $64 million. The Company understandably did not keep that much cash on hand. The Company explained that

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[105] *Id.* at *3, *5.

[106] *Id.* at *3.

[107] *Id.* at *7.

[108] *Chertok v. OnSolve LLC*, 2026 WL 986602, at *9 (Del. Ch. Apr. 13, 2026).

[109] *Id.* at *10.

"a capital call was needed to fund the payment" and that payment would be made on February 20 or 23.[110] The Company paid the merger consideration on February 20, eight business days after receiving the corrected withdrawal notice.[111]

Unlike in *Mehta* or *Chertok*, the Company did not improperly condition payment on a settlement or release of claims. Nor did the Company retain the merger consideration for an extended period of time after the appraisal right lapsed. The Company appropriately sought to clarify a discrepancy in the Funds' initial withdrawal notice, explained the need to raise capital to fund the payment, and paid the amount due within eight business days. The Funds' inability to use their funds in the interim might be viewed as an impoverishment, but it was not without justification.

It is not reasonably conceivable that the Company did anything unjust. Accordingly, the Funds are not entitled to interest under an unjust enrichment theory.

4. The Breach Of Contract Theory

The Funds suggest that interest also might be recoverable under a theory of breach of contract. Assuming that theory was viable, the court would at most imply a term requiring payment within a reasonable time. It is not reasonably conceivable that the Company breached that hypothetical term.

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[110] OB at 5.

[111] *Id.* at 5–6.

"The elements of a claim for breach of contract are (i) a contractual obligation, (ii) a breach of that obligation by the defendant, and (iii) a causally related injury that warrants a remedy, such as compensatory damages, nominal damages, or in an appropriate case, specific performance."[112] "If no time for performance is fixed, the court will imply a reasonable time."[113] More generally, "in every contract there is implied a promise or duty to perform with reasonable expediency the thing agreed to be done; a failure to do so is a breach of contract."[114]

The corporate charter is a "contract between a Delaware corporation and its stockholders."[115] "It is elementary that [the Delaware General Corporation Law's] provisions are written into every corporate charter."[116] Thus, an unreasonable delay in delivering merger consideration as contemplated by Section 262 could theoretically breach an implied provision in the corporate charter. This decision need not resolve that issue, because assuming such an obligation existed, it is not reasonably conceivable that the Company delayed unreasonably.

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[112] *STX Bus. Sols., LLC v. Fin.-Info.-Techs., LLC*, 2024 WL 4645104, at *3 (Del. Ch. Oct. 31, 2024) (footnote omitted), *aff'd,* 342 A.3d 399 (Del. 2025) (TABLE).

[113] *Martin v. Star Publ'g Co.*, 126 A.2d 238, 244 (Del. 1956).

[114] *Comet Sys., Inc. S'holders' Agent v. MIVA, Inc.*, 980 A.2d 1024, 1034 (Del. Ch. 2008) (quoting 23 Richard A. Lord, *Williston on Contracts* § 63:24 (4th ed. 1990)).

[115] *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934, 955 (Del. Ch. 2013) (citing *Airgas, Inc. v. Air Prods. & Chems., Inc.*, 8 A.3d 1182, 1188 (Del. 2010)).

[116] *Fed. United Corp. v. Havender*, 11 A.2d 331, 333 (Del. 1940).

The Merger Agreement is another contract. To recover interest for the breach of a payment obligation in a merger agreement, a stockholder "need not show that the merger agreement contains a provision requiring payment on a specific date and the payment of interest for any delay."[117] A stockholder need only show that "payment was unreasonably withheld after the right to that payment had absolutely vested."[118] Thus, an unreasonable delay in delivering merger consideration could theoretically breach an implied provision in the Merger Agreement. Although the Merger Agreement provides for no interest, a court might conclude that the prohibition did not extend to an exceptional case. This decision need not resolve that issue either, because assuming such an obligation existed, it is again not reasonably conceivable that the Company delayed unreasonably.

Accordingly, the Funds are not entitled to interest under a breach of contract theory.

C. No Fee Shifting

The Funds seek "all expenses incurred" in connection with this action, including reasonable costs and attorneys' fees. There is no basis for that relief.

Delaware follows the American Rule, under which "a prevailing party is generally expected to pay its own attorney's fees and costs."[119] The appraisal statute

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[117] *Comet*, 980 A.2d at 1034.

[118] *Id.*

[119] *Montgomery Cellular Hldg. Co. v. Dobler*, 880 A.2d 206, 227 (Del. 2005).

authorizes "[t]he costs of the proceeding [to be] taxed upon the parties as the Court deems equitable in the circumstances."[120] But taxable costs do not include attorneys' fees.[121]

The appraisal statute also permits the Court to order "all or a portion of [the petitioners' litigation] expenses, including, without limitation, reasonable attorney's fees and the fees and expenses of experts," to be "charged pro rata against the value of all the shares entitled to an appraisal."[122] That provision does not contemplate fee shifting against the surviving corporation.[123]

The only other potential basis for fee-shifting is the bad-faith exception to the American Rule. That exception applies only in "extraordinary circumstances" and requires clear evidence of bad faith.[124] The Funds have not provided any evidence of bad faith on the Company's part.

III. CONCLUSION

The Funds have not stated a reasonably conceivable claim for interest in Count II. The Company's motion for partial judgment on the pleadings is granted as to

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[120] 8 *Del. C.* § 262(j).

[121] *See Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 685–86 (Del. 2013).

[122] 8 *Del. C.* § 262(j).

[123] *See In re Appraisal of Shell Oil Co.*, 1992 WL 321250, at *3 (Del. Ch. Oct. 30, 1992).

[124] *In re Cellular Tel. P'ship Litig.*, 2022 WL 698112, at *58 (Del. Ch. Mar. 9, 2022).

Count II. Count I remains pending. Within ten days, the parties must submit an agreed-upon form of order to implement this ruling. If the parties cannot agree, they must submit a joint letter—not to exceed 3,000 words—stating their positions and providing competing forms of order.